

## **ARTICLE XXVII. Transfer of Development Rights**

**[Added 10-23-2008 by L.L. No. 8-2008]**

### **§ 139-72. Legislative intent.**

The Town of Lysander has developed a transfer of development rights (TDR) program in accordance with § 261-a of the Town Law of New York State. The establishment of sending and receiving area overlays in the AR-40 Zoning District is intended to ensure a long-range growth management strategy. The Lysander TDR program is designed to maintain an economically viable agricultural presence and to preserve open space in those areas of the Town zoned AR-40, particularly in the Cold Springs Peninsula, and associated objectives outlined in Amendment No. 1 to the Town of Lysander Land Use Plan and GEIS adopted on July 12, 2007.

### **§ 139-73. Compliance with Town Law and planning documents.**

The TDR program was developed pursuant to § 261-a of the Town Law of New York State and the Town of Lysander Land Use Plan (Comprehensive Plan). Sending and receiving areas shall be indicated as floating overlay zones on the official Town of Lysander Zoning Map and may be adjusted over time following due process through Town Law. The procedure for amending the sending and receiving area overlays shall be the same as for an amendment to the Town Zoning Map.

### **§ 139-74. General procedures and restrictions.**

A. Town approval. Before a transfer of development rights occurs, the Lysander Planning Board shall determine that said transfer from the sending area parcel to the proposed receiving area is consistent with the program goals and objectives. This determination shall be made as a part of the reviews by the Town Planning Board under §§ [139-75C](#) and [139-76C](#).

B. Designation of sending and receiving areas. Sending and receiving areas shall be designated with specificity by the Town Board based upon the criteria in §§ [139-75A](#) and [139-76A](#) and upon a finding that the designation meets with the intent of the TDR program goals and objectives. Prior to the designation, a public hearing upon appropriate notice to affected property owners and the public will be held. The Town Planning Board will review the proposed designations and provide recommendations to the Town Board. The designation and mapping of sending and receiving areas may be amended by the Town Board following the same procedure.

C. Restriction on transfers. The transfer of development rights from a sending area to a receiving area shall be subject to the following restriction: Development rights transferred from a sending area in one region may only be assigned or transferred to a receiving area in the same region with the intent to equalize sending and receiving areas within each region. It is anticipated that the Town Board, when sending and receiving areas are designated and amended for the AR-40 Zoning District (see Subsection [B](#)), will establish three regions:

- (1) Region A: the Cold Springs Peninsula;
- (2) Region B: the Seneca Region; and
- (3) Region C: the West Phoenix Region.

D. The TDR program is proposed to be initiated with the implementation of a revolving fund (see Subsection [E](#)), which is made possible with the acquisition of development rights on up to three farms whose conservation easement transactions will be paid for through a Farmland Protection Implementation Grant award from the NYS Department of Agriculture and Markets.

E. Establishment of a revolving fund to purchase and sell development rights.

(1) There is hereby established the Transfer of Development Rights Revolving Fund (hereafter, the "revolving fund") to assist in the administration of the transfer of development rights program in the Town of Lysander under this Article [XXVII](#) of the Zoning Law.

(2) The Town, through the revolving fund, shall purchase and accept assignments of development rights, conduct periodic auctions of development rights, sell development rights and maintain a registry of development rights in accordance with the provisions of this Article [XXVII](#) of the Zoning Law and any regulations adopted by resolution of the Lysander Town Board. The revolving fund shall receive monies from the sale of Development Rights, and may also accept gifts, donations and bequests of money, Development Rights or other property. All funds shall be deposited in a special municipal account or accounts in the name of the Town. With the consent of the Town Board, monies shall be expended from the revolving fund for the purchase of Development Rights and for the expenses necessitated by the Development Rights program.

(3) The revolving fund shall operate according to procedures expressly approved by resolution of the Town Board.

F. Establishment of an open market system to purchase and sell Development Rights.

(1) An open market system will provide the option for sending parcel owners to sell Development Rights to the Town or to negotiate directly with interested buyers. The transfer and recording of Development Rights (and respective conservation easements) will be processed by the Town in accordance with the requirements of this article.

(2) The open market system may be exercised within sending and receiving areas within the three regions (as further defined in Subsection [C](#)) in a chronological timeline relative to the TDR program:

(a) Region A: no sooner than the requirements of the NYS Department of Agriculture and Markets Farmland Protection Implementation Grant are fulfilled, but not later than one year from the time of adoption of this article.

(b) Regions B and C: one year from the time of adoption of this article.

G. Determination of the number of transferable Development Rights. The number of Development Rights available to be transferred from a sending area parcel is generally calculated based upon the underlying density permitted in the AR-40 Zoning District. The number of Development Rights that can be used in a receiving area is based upon the underlying density permitted in the R-20 Zoning District.

(1) The number of Development Rights is generally calculated through the following formulas, rounding down to the nearest whole number to avoid fractions of Development Rights:

No. of Acres in Sending x 0.75 = No. of Dev. Rights per Sending Acre

No. of Acres in Receiving x 1.25 = No. of Dev. Rights per Receiving Acre

(2) The product of the numbers above shall be verified upon approval of a density determination exhibiting a buildable AR-40 subdivision scenario on sending parcels unless the landowner selects the alternative procedures in § [139-75C\(2\)](#). Said density determination shall follow the procedures set forth in § 278 of the Town Law.

(3) The product of the numbers above shall be verified upon approval of a density determination exhibiting a buildable R-20 subdivision scenario on receiving parcels. Said density determination shall follow the procedures set forth in § 278 of the Town Law.

H. Conservation easement. If the landowner of a sending parcel intends to sell Development Rights, he or she shall retain the title to the property but shall be required to attach a permanent conservation easement to the title prohibiting future development in accordance with the Town of Lysander standard conservation easement as approved by the Lysander Town Board. The perpetual conservation easement shall forever prohibit residential, industrial, and commercial uses, except in connection with agriculture as defined by the New York State Department of Agriculture and Markets, of the portion of land from which Development Rights were severed, and shall not be amended to permit such uses.

I. Transferability of remaining rights. The remaining unrestricted portion of a sending area parcel may still be developed with the remaining Development Rights, or the remaining transferable Development Rights may be sold with the remaining land deed restricted in accordance with the provisions of this article.

J. Reduction and/or extinguishment of revolving fund.

(1) Upon fulfillment of the requirements of the NYS Agriculture and Markets Farmland Protection Implementation Grant, the Town may determine that the revolving fund contains a surplus and may adopt a resolution following a public hearing declaring a finding of excess money. The finding will be based upon one of three criteria as follows:

(a) The revolving fund has generated more money than is needed to purchase the remaining Development Rights from the sending areas and make any residual payment otherwise due.

(b) No purchase of Development Rights by the fund are either requested by the submission of an application under § [139-75C\(1\)](#) or [C\(2\)](#) or completed within a period of five years.

(c) All Development Rights from approved sending areas have been purchased, at which time the revolving fund may be extinguished.

(2) Should the revolving fund be extinguished, the Town may elect to continue with an open market system working under due process and the TDR program procedures as prescribed herein.

K. Use of excess moneys generated through the TDR program. Excess moneys generated by the TDR program may be used by the Town for any purpose allowed under Town Law. Excess moneys shall exclude any residual payments yet owed under § [139-75E](#).

## § 139-75. Sending areas.

A. Sending area criteria. Land that meets the following criteria qualifies for designation by the Town Board as a sending area:

- (1) Sending parcels must be within the AR-40 Zoning District.
- (2) Sending parcels or sending acreage within parcels must contain economically viable agricultural land including either a predominance of tillable acreage or land primarily suitable for agriculture, silviculture, or horticulture (Tillable acres are the amount of land area than can be tilled to allow for crop propagation.).
- (3) Sending parcels must contain soils of Class 1, 2, 3 or 4, as defined by the New York State Department of Agriculture and Markets in 1 NYCRR Part 370.
- (4) Sending parcels must be within (or proposed to be included in) an Agricultural Taxing District.
- (5) Sending parcels must be a minimum of 11 acres in size or adjacent to a qualified sending parcel that contains a minimum of 11 acres of land.
- (6) Sending parcels must be actively farmed, be part of a farm operation, or contain vacant agricultural land suitable for farming.
- (7) Sending parcels must be owned or leased by a farmer or farm operation.

B. Landowner options. The landowner of an eligible sending parcel has the following development and transfer options, subject to any other applicable provisions of § [139-75](#):

- (1) Option 1: A landowner may develop his or her property in compliance with all applicable provisions of the requirements of Chapter [139](#), Article [V](#), and Chapter [117](#) of the Town of Lysander Code. Lot size shall be in compliance with § [139-58](#) for lots within Agricultural Taxing Districts.
- (2) Option 2: A landowner may sell or transfer all or part of the Development Rights associated with the property to the Town of Lysander revolving fund for subsequent resale through a public bidding process. A sending landowner may retain one development right for every 25 acres of farmland to be preserved.
- (3) Option 3: A landowner may sell or transfer all or part of the Development Rights associated with the property through an open market system (in compliance with § [139-74F](#)). A sending landowner may retain one development right for every 25 acres of farmland to be preserved.
- (4) Option 4: A landowner may transfer Development Rights from property in a sending area under his or her ownership to other property in a receiving area under his or her ownership, subject also to the applicable provisions of § [139-76](#).

C. Transferring Development Rights from sending areas: approval procedure.

- (1) Landowners in designated sending areas who wish to sell Development Rights must demonstrate that their land meets the sending area criteria listed in Subsection [A](#) and will

meet with the program goals and objectives outlined in Amendment No. 1 of the Town of Lysander Land Use Plan.

(a) The number of Development Rights that qualify for transfer shall be determined by the Town of Lysander Planning Board. A landowner must submit an application, including a conceptual plan, meeting all of the requirements of Chapter [139](#), Article [V](#), of the Town of Lysander Zoning Law and all requirements of the Subdivision Regulations. *Editor's Note: See Ch. [117](#), Subdivision of Land.* The original and three copies of a conceptual plan must be submitted to the Planning Board along with a signed written application seeking approval of the proposed transfer of Development Rights.

(b) The application and conceptual plan shall include the following:

[1] A survey of the property stamped and signed by a professional licensed surveyor at a scale of no less than one inch equals 100 feet showing:

[a] Property acreage;

[b] Stream corridors;

[c] Wetlands and steep slopes greater than 15%;

[d] Vegetation other than agricultural crops (tree lines, hedgerows, etc.);

[e] Roads and utilities within 500 feet of the property boundary;

[f] Easements and rights-of-way;

[g] Underground easements; and

[h] Location of all building structures and impervious surfaces.

[2] A copy of a preliminary plat indicating:

[a] The layout of a hypothetical subdivision that complies with Chapter [139](#), Article [VI](#), of the Town of Lysander Zoning Law and Chapter [117](#), Subdivision of Land;

[b] The acreage of each subdivided parcel;

[c] The dimensions (width and length) of all internal roads, stormwater management areas, and required easements; and

[d] Certification by a professional licensed surveyor of all boundaries as required for approval of a preliminary plat in accordance with the Subdivision Regulations.

(2) A landowner in a designated sending area who does not wish to follow the full Development Rights determination set forth in Subsection [C\(1\)](#) may opt to accept a development rights determination of 0.75 Development Right per acre. A landowner must submit a signed written application electing that option, along with a survey in compliance with Subsection [C\(1\)\(b\)1](#) showing the items in Subsection [C\(1\)\(b\)1](#)[a], [b] and [c], must follow the procedure in Subsection [D](#) and, if the landowner proposes a sale of Development Rights to the revolving fund, must follow the procedure in Subsection [C\(7\)](#) and [\(8\)](#).

(3) The Planning Board will forward the conceptual plan to the Town Engineer. The Town Engineer shall review the submission for accuracy and compliance with the Town of Lysander Zoning Law and Subdivision Regulations. The Engineer shall advise the Planning Board of findings and required adjustments to the conceptual plan.

(4) At a regular meeting, the Planning Board, after giving consideration to the engineer's report and any additional information that the parcel owner, engineer, or Planning Board shall reasonably require, shall make a determination as to the number of Development Rights eligible for transfer based upon either:

(a) The approved preliminary plat (e.g., approval of a buildable plat by the Planning Board) as the measure of the development potential of the parcel (i.e., Development Rights yield); or

(b) The landowner's 0.75 Development Right per acre election.

(5) Any sending area landowner who is dissatisfied with the Planning Board's determination regarding the number of Development Rights may appeal the Planning Board's decision to the Town Board by forwarding a letter or other written notice to the Town Supervisor setting forth the landowner's position. The Town Board shall hear arguments and receive evidence deemed appropriate at one or more public hearings, and shall make a determination based upon the criteria in this article. The determination of the Town Board shall be final, and reviewable only in an Article 78 proceeding commenced within 30 days after the filing of the Town Board's determination in the Town Clerk's office.

(6) Any appeal or review of a Development Rights determination in a sending area shall occur prior to the recording of a conservation easement. Once a property is restricted through the recording of a conservation easement, the owner's appeal and any Article 78 review is forfeited and the parcel owner shall be deemed to have finally accepted the number of Development Rights calculated by the Planning Board.

(7) If the landowner proposes to sell the Development Rights to the revolving fund, following the determination in Subsection [C\(4\)](#), the applicant shall submit to the Town Board a current self-contained appraisal of the value of the land area presented in the conceptual plan and the value of the Development Rights to be transferred. An appraiser approved by resolution of the Town Board shall prepare the appraisal, and the appraisal shall comply with any requirements set by resolution of the Town Board.

(8) If the landowner proposes to sell the Development Rights to the revolving fund, the Town Board shall establish the value of the Development Rights from the landowner's parcel based upon the appraisal. Once the value of the Development Rights is established, the Town Board will authorize the purchase of the Development Rights from the sending landowner to the extent that funds are available in the revolving fund. The Town Board will require a boundary survey of the land area to be placed in a conservation easement.

#### D. Transferring Development Rights from sending areas: closing and registration procedure.

(1) After the Town Board approves the transfer of Development Rights, the sending landowner shall submit to the Town Attorney a signed Town of Lysander standard conservation easement, a title insurance report (commitment), and any other documents requested by the Town Attorney to provide the Town with a conservation easement upon, and an assignment of Development Rights from, the sending landowner's parcel free of liens, mortgages and other encumbrances. Title insurance shall be provided to the Town for the full value of the Development Rights sold.

(2) The Town Attorney shall determine that the conservation easement is in proper legal form for recording in the County Clerk's office. The Town Attorney shall also determine, based upon the title report and any accompanying documents, that the applicant holds insurable title clear of any encumbrances to the parcel; or that rights-of-way, easements, or utilities exist on the parcel and that the holder of any lien, mortgage, or other interest affecting the conservation easement has agreed in writing to subordinate his or her interest in the parcel to the purpose set forth in the conservation easement. The Town Attorney shall certify to these facts by signing the conservation easement and shall record the appropriate documents with the County Clerk and notify the Town Comptroller that the documents have been recorded.

(3) Upon receipt of proof that the conservation easement has been recorded with the Onondaga County Clerk's office, the Town Comptroller shall:

(a) Assign serial numbers to each development right;

(b) Record the Development Rights in a registry (This record shall include the County Clerk's assigned book and page of recording of the conservation easement.); and

(c) Forward a copy of the recorded conservation easement to the Planning Board for its information.

(4) A landowner shall be responsible for all costs associated with the review of the enrollment application, including professional fees authorized by § 67-4 of the Lysander Town Code, and the expense of title insurance, abstract fees, and recording fees.

E. Payments from the revolving fund to the sending landowners. Where the Town Board has authorized the purchase of Development Rights, the Town will utilize the revolving fund to purchase Development Rights from the sending landowners for 75% of the current value of the Development Rights within 90 days after the recording of a conservation easement (initial payment), and any other necessary documents with the Onondaga County Clerk. Within 90 days after the Development Rights have been purchased from the revolving fund, the sending landowners will receive payments for the remaining 25% plus 90% of any proceeds above the initial appraised value (residual payment). Until such time as the Development Rights purchased with the NYS Agriculture and Markets Farmland Protection Implementation Grant are totally resold, residual payments shall be made to sending landowners in proportion to the amount of contributory Development Rights of each participant.

#### **§ 139-76. Receiving areas.**

A. Receiving area criteria. Land that meets the following criteria qualifies for designation by the Town Board as a receiving area:

(1) Receiving parcels must be within the AR-40 Zoning District.

(2) Receiving parcels must lack environmental sensitivity (e.g., wetlands, stream corridors, steep slopes, important habitat) or contain enough area to avoid and buffer environmentally sensitive land areas.

(3) Receiving parcels must be within or contiguous to an existing or proposed water district.

(4) Receiving parcels must be within, contiguous to, or in close proximity to existing sewer districts or currently proposed sewer extensions.

(5) Receiving parcels must have direct access to an arterial road or collector road as defined in § [139-60](#) of the Lysander Town Code. Access to an arterial or collector road must be from a system of local roads in accordance with the Town of Lysander's Long-Range Transportation Plan, and must be built to Town standards and constructed within the proposed development.

B. Landowner or developer options. The landowner or developer of a property located in a receiving area shall have the following development options, subject to any other provisions of § [139-75](#).

(1) Option 1: A landowner or developer may develop his or her property in compliance with all applicable provisions of the requirements of Chapter [139](#), Article [V](#), and Chapter [117](#) of the Town of Lysander Code. Lot size shall be limited to the AR-40 lot size requirements and in compliance with § [139-58](#) for lots within Agricultural Taxing Districts.

(2) Option 2: A landowner or developer may purchase additional Development Rights through a public bidding process and apply those Development Rights to an approved receiving site, through subdivision review pursuant to Chapter [139](#), Article [VI](#) (R-20), and Chapter [117](#) of the Town of Lysander Code. The owner of a parcel in a receiving area shall have final plat approval prior to utilizing Development Rights in a receiving area.

(3) Option 3: A landowner or developer may purchase Development Rights through the open market system (in compliance with § [139-74F](#)).

(4) Option 4: A landowner may transfer Development Rights to property in a receiving area under his or her ownership.

C. General procedures and restrictions.

(1) Purchase of Development Rights from the revolving fund shall be based upon a public bidding process. The minimum bid at any auction shall be the full value of any Development Right purchased by the Town in each respective region.

(2) For each Development Right purchased, the receiving site landowner or developer shall be permitted to build one additional dwelling unit.

(3) In no case shall the resulting density of the property, after the addition of the purchased Development Rights, exceed the net residential density. "Net residential density" shall mean the maximum development potential of a site that meets all of the conditions of the Town of Lysander Subdivision Regulations (Chapter [117](#) of the Town Code) and Article [VI](#) (R-20) of the Zoning Law (Chapter [139](#), Article [VI](#), of the Town Code) and conditions set forth by the Town of Lysander Planning Board necessary for preliminary plat approval of the property unless the Development Rights are transferred to a receiving area that has been designated as a planned unit development (PUD) in accordance with Chapter [139](#), Article [XVI](#), of the Lysander Town Code. In the case of an approved PUD, net density may be concentrated or clustered on portions of a lot or lots as outlined in a general project plan approved by the Lysander Town Board indicating the use and density for a land area that is subject to a zone change to PUD.

(4) Density may be increased up to 12 units per acre upon request for a zone change to planned unit development or within a cluster subdivision on a portion or portions of a receiving area. However, overall density of the development will be based upon the underlying allowable density of the R-20 Zoning District and shall not exceed 1.25 units per

acre. Calculation of the overall density and the total number of units per acre shall be stated in the conditions of a change in zoning to planned unit development.

(5) Except in a PUD, development added to property in a receiving area through the TDR program shall be consistent with the list of permitted uses in the R-20 Zone (Chapter [117](#) and Chapter [139](#), Article [VI](#), of the Lysander Town Code) and shall be compatible with the existing and/or proposed uses on the property; and shall meet all permitting agency requirements.

(6) The final subdivision plat shall indicate the sending parcel from which Development Rights were purchased.

(7) When clustering, lot sizes in receiving areas shall not be less than 20,000 square feet unless public water, sewer, and adequate area for stormwater management are available. The Town Law § 278 cluster technique provided by local zoning may be exercised within the receiving areas when authorized by the Town Board. The distribution of unit density through clustering techniques is encouraged where appropriate.

(8) Development in receiving areas should provide a variety of housing types to provide for low- to moderate-income housing pursuant to the Town Law of New York State.

D. Transfer of Development Rights from the registry to receiving parcels. The Planning Board shall specifically identify each lot in the proposed subdivision to which each development right shall attach. The maximum density in the receiving area will be based upon an approved preliminary plat. Upon approval of a final plat, the Development Rights will be transferred to a development parcel. If the final plat is approved for more development lots than the number of purchased Development Rights, only the approved number of Development Rights may be exercised in the receiving area. If the final plat is approved for fewer lots than the approved preliminary plat, the unused Development Rights will remain in the registry.

E. Approval procedures. An owner or developer of land located within a receiving area may utilize Development Rights purchased from the revolving fund or through the open market system to increase the number of units that may be developed by utilizing the following procedures:

(1) The owner/developer of land within the receiving area must first obtain final approval for the development of a project within the receiving area contingent and conditioned on the acquisition of Development Rights.

(2) To meet the condition of approval, the owner/developer, at or prior to the signing of a subdivision plat or the issuance of the first building permit, whichever occurs first, on forms approved by the Planning Board and obtained from the Town Clerk, shall submit to the Town Comptroller:

(a) An original and two copies of a completed application for Development Rights use that indicates the specific source of Development Rights to be used within the development;

(b) An original and two copies of a deed of Development Rights transfer; and

(c) Receipt of the appropriate fees expended for review.

(3) The Town Comptroller, with the assistance of the Town Attorney and the Town Engineer, within 95 days of receipt, shall determine that the application is complete and:

(a) Accurately specifies the number of Development Rights indicated on the preliminary plat approved by the Planning Board for the development of the parcel sought to be developed;

(b) Demonstrates that the developer has acquired all Development Rights needed for the proposed development; and

(c) Accurately specifies by reference to assigned serial numbers or otherwise which Development Rights are being used by the development.

(4) Upon the determination described in Subsection [E\(3\)](#), the Town Comptroller shall sign the deed of Development Rights transfer, which shall certify that recording the deed of Development Rights transfer will permanently and irreversibly transfer the number of Development Rights contained within it to the parcel of land cited, and arrange for the recording of the deed with the County Clerk.

(5) Proof of recording of the deed of Development Rights transfer shall be a prerequisite to the issuance of any building permit for development of the land upon which the Development Rights are to be used.

(6) Recording the deed of Development Rights transfer shall extinguish the ability to use any development right transferred except upon the parcel to which the development right has been transferred.

(7) Upon receipt of proof that the deed of Development Rights transfer has been recorded, the Town Comptroller shall:

(a) Record the Development Right in the registry (the record shall include the Clerk's assigned book and page of recording);

(b) Forward a copy of the recorded deed of Development Rights transfer to the Planning Board for its information; and

(c) Assign the transferred Development Rights to the receiving parcel in the development rights registry [[§ 139-75D\(3\)\(b\)](#)].

(8) Any person, firm, or entity that purchases or otherwise acquires, encumbers or utilizes any development potential under this chapter shall notify the Town Clerk and Comptroller of the same in writing within 10 business days.

F. Deed of dedication. After a final plat for the first section of an approved subdivision plan is signed by representatives of the Town, but before the plat is filed, the developer shall record against the land to be developed a deed of dedication approved by the Town Attorney, which shall dedicate the entire site for use in the transfer of Development Rights program. The residual Development Rights existing on the land covered by the development, if any, shall be deemed created only upon the filing of the deed of dedication. Filing the deed of dedication shall entitle the landowner to exercise Development Rights obtained through this program and created on the land affected by the application of development at the R-20 density or for the uses permitted by provisions of this article. Until the deed of dedication is recorded, the land is subject to the density and use restrictions otherwise controlling within the district.

G. Review costs. A receiving area landowner shall be responsible for all costs associated with the review of the Development Rights transfer application, including professional fees authorized by the Town Code and recording expenses.